IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 812 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

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GOVINDBHAI BHILIYABHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,MS NEETA J MERCHANT for Appellant(s) : 1,
MR HL JANI APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 09/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.0 The appellant herein – original accused in Sessions Case No.49 of 1997 came to be convicted vide judgment and order dated 12.08.1998 by the learned Addl. Sessions Judge, Surat, Camp at Vyara for offence punishable u/s. 302 of the Indian Penal Code, 1860 [for short, “the IPC”] and sentenced to undergo imprisonment for life with fine of Rs.500/- and in default of payment of fine, simple imprisonment for further three months.

2.0 The short facts of the prosecution case are as under;

On 04.10.1996, at about 9.00 p.m., the appellant, who is the younger brother of the deceased, called upon the wife of the deceased to give dinner. Accordingly, the wife of the deceased supplied the same to the appellant. At that time, the deceased told the appellant that as to on what basis he was demanding food since he was neither doing any work and roaming about here and there and was also consuming liquor. Subsequently, some arguments took place between the appellant and the deceased. Thereafter, the appellant went to another room and came out with an Axe and inflicted about 3 to 4 blows on the body of the deceased. On noticing the same, the son and wife of the deceased, who were present in the

house at the relevant point of time, tried to rescue the deceased. However, before they could do anything, the appellant ran away from the spot along with the said Axe. Since it was night hours and the nearest Police Station being Vyara Police Station was situated at a distant place from the house of the deceased, they took the deceased to a nearby Court complex and waited there till the morning. In the morning, the son of the deceased went to meet the Sarpanch of the Village and informed the Sarpanch about the said incident. Thereafter, he and the Sarpanch went to Vyara Police Station wherein, the son of the deceased lodged a complaint against the appellant narrating all the details.

2.1 Thereafter, the policy authority carried out necessary investigation at the house of the deceased. 'Panchnama' of the scene of offence was drawn and 'muddamal' was also collected. Inquest 'Panchnama' was also prepared and, thereafter, the dead body was sent to the Government Hospital at Vyara for performing Post-mortem. Statements of witnesses were recorded. The clothes that the deceased had worn at the time of the incident were seized by way of a separate 'Panchnama'. Necessary search for the appellant was carried out and, subsequently, he was arrested.

The weapon – Axe as well as the clothes worn by the appellant were seized by way of a separate 'Panchnama'. Thereafter, all the 'muddamal' articles were sent to the F.S.L. along with a forwarding letter. After receipt of the PM Note and the F.S.L. Report, the same were kept along with the investigation papers.

2.2 At the end of investigation, the Investigating Officer filed charge-sheet against the appellant in the Court of learned Judicial Magistrate, First Class, Vyara. As the charge against the appellant was exclusively triable by the Court of Sessions, the same was committed by the learned Judicial Magistrate, First Class, Vyara to the District & Sessions Court at Surat. On receiving the same, it has been numbered as Sessions Case No. 47 of 1997 and the same was sent to Vyara for the purpose of disposing of the same on merits.

3.0 On production of the appellant, the learned Addl. Sessions Judge framed the charge wherein, the appellant pleaded not guilty and prayed for trial. Therefore, to prove the guilt against the appellant, the prosecution has examined the following witnesses ;

- PW – 1, Narottambhai Madhavbhai Gamit at Exhibit – 11 is the son of the deceased and an eye-witness of the incident, through whom the prosecution has proved the complaint at Exhibit – 12.

- PW – 2, Savitaben Madhavbhai at Exhibit – 13 is the wife of the deceased and an eye-witness of the incident.

- PW – 3, Dr. Ravindra Babubhai Patel at Exhibit – 14 is the Medical Officer who has performed the Post-mortem of the dead body of the deceased and through whom the prosecution has proved the PM Note at Exhibit – 15.

- PW – 4, Savitaben Laxmanbhai at Exhibit – 23 is the sister of the deceased as well as the appellant but, who has not supported the case of the prosecution.

- PW – 5, Kailashnath Shyamsundar Shukla at Exhibit – 24 is the Investigating Officer.

3.1 The prosecution has relied upon the following documentary evidences ;

- The complaint at Exhibit – 12.
- The PM Note at Exhibit – 15.
- The Inquest 'Panchnama' at Exhibit – 16.
- The 'Panchnama' of the scene of offence at Exhibit – 17.
- The 'Panchnama' of the clothes seized from the dead body of the deceased at Exhibit – 18.
- The 'Panchnama' of the 'muddamal' article no. 6 – Axe as well as the clothes that were worn by the appellant at the time of commission of the offence at Exhibit – 19.
- The F.S.L. Report at Exhibit – 20.
- The map of the scene of offence prepared by the Circle Inspector at Exhibit – 22.

4.0 On production of the closing 'purshis' at Exhibit – 25, the learned Addl. Sessions Judge recorded the further statement of the appellant u/s. 313 of the Code of Criminal Procedure, 1973. After giving opportunity to the learned counsel for the respective parties of being heard, the learned Addl. Sessions Judge delivered the judgment whereby, he convicted the appellant for the offence punishable u/s. 302 of the IPC and imposed sentence as stated in the earlier part of this judgment. Being aggrieved by the same, the appellant has approached this Court by way of this Appeal.

5.0 We have heard learned counsel for the appellant Ms. Neeta J. Merchant and learned APP for the respondent – State Shri H. L. Jani. The main contention raised by learned Advocate for the appellant is that there are material contradictions in the statements of the two eye-witnesses and, therefore, their evidence ought not to have been accepted by the Court below. She has submitted that except the evidence of the said two witnesses, there is no other evidence on record to connect the appellant with the crime in question.

5.1 It is further contented on behalf of the appellant that the injuries, as described by the evidence of the Doctor and as narrated by the prosecution witnesses, are wholly indifferent, which clearly creates doubts about the prosecution story. Learned Advocate has, therefore, contented that the appellant should be given the benefit of doubt and should be acquitted from the offence in question.

5.2 Learned Advocate for the appellant has further contented that since the incident had taken place during night hours, it was almost impossible for anyone to notice the same. It is contented that the appellant has been involved in the

alleged offence merely on the basis of presumptions and without their being any evidence to that effect.

5.3 It is further contented that there is a delay in filing the complaint and that the said delay has not been explained. Learned Advocate has, therefore, submitted that considering the entire evidence on record, it is clear that the appellant has been falsely implicated in the alleged offence. Hence, the Appeal deserves to be allowed and the appellant is required to be acquitted from the offence in question.

6.0 Learned APP has vehemently objected to the grant of this Appeal and has submitted that there are two eye-witnesses to the said incident, whose presence at the relevant point of time, cannot be disputed at all since the same was natural. It is submitted that when the presence of the said two eye-witnesses is established at the scene of offence and it is also proved that the incident has taken place in the house premises, then the evidence of these two witnesses cannot be discarded.

6.1 It is further contented by the learned APP that after the occurrence of the incident, only two persons were left in

the house, i.e. the son and wife of the deceased, and, since the house of the deceased was situated in a remote area and it was night hours, the son / wife of the deceased could not ask for any help. Therefore, they waited till the morning and in the morning, after meeting the Sarpanch of the Village, the son of the deceased, along with the Sarpanch, went to the Police Station and registered the complaint in question. It is, therefore, submitted that there was no delay in filing the complaint as the same was filed at the earliest point of time.. Thus, the Appeal deserves to be dismissed.

7.0 We have gone through the oral as well as documentary evidence on record. It is a matter of record that the appellant and the deceased were real brothers while the complainant and PW – 2 are the son and wife respectively of the deceased and that all of them were staying together under one roof. As per the say of the prosecution, PW – 1 at Exhibit - 11 and PW – 2 at Exhibit – 13, are the eye-witnesses of the incident. Both have been examined by the prosecution and through them the prosecution has proved the complaint at Exhibit – 12. Both the witnesses have categorically deposed that on the day of incident, they were present in the house and at around 9.00 p.m., the appellant called upon PW – 2 to give

dinner. Accordingly, PW – 2 gave dinner to the appellant. But, at that time, the deceased, who is the elder brother of the appellant, said few words, which enraged the appellant. Therefore, the appellant went to another room and came out with an Axe in his hands and, thereafter, inflicted about three to four Axe blows on the body of the deceased. It has also been deposed that on hearing the arguments that took place between the appellant and the deceased, both these witnesses went to the room in question and their they noticed that the appellant was inflicting Axe blows on the body of the deceased. Thereafter, the appellant left the house with the said Axe. Both these witnesses waited till the morning and then, along with the Sarpanch of the Village, PW – 1 went to the Police Station for the purpose of registering the complaint Exhibit – 12. The said complaint at Exhibit – 12 supports the say of the prosecution *in toto*. In the said complaint, PW – 1 has narrated everything in detail and has also stood to his version before the Court below. Nothing contrary has come on record which may shake the evidence of these two eye-witnesses.

8.0 It is required to be noted that the presence of these two witnesses at the scene of offence during night hours is a

natural one since they are the son and wife respectively of the deceased. The presence of the appellant is also established from the depositions of these two witnesses and the same has not be denied by the appellant also, at the time of his cross-examination before the Court below. Thus, no question of mis-identification shall come into existence. Apart from that the conduct of the appellant after the occurrence of the said incident is required to be noted. The appellant, after the incident in question, went out of the house along with the Axe with which he had inflicted about three to four blows on the deceased. Now, if we presume that someone else would have inflicted the said blows on the deceased, then the appellant would not have left the scene of offence.

9.0 Moreover, on being arrested, the weapon in question was also recovered from the appellant and as per the recovery 'Panchnama' at Exhibit – 19, the 'muddamal' article no. 6 – Axe was having human blood stains. The cloth, i.e. the shirt, that was worn by the appellant and which has been seized by way of a separate 'Panchnama', was also having human blood stains. Both these articles were sent to the F.S.L. and from the Report of the F.S.L., it is established that both the 'muddamal' articles were having human blood stains

with Blood Group 'A'. It is also proved that the deceased was having Blood Group 'A'. Not only that the 'Panchnama' of the scene of offence also found that the control mud at the place of incident was also having human blood with Blood Group 'A'.

10.0 The prosecution has also examined Dr. Ravindra Babubhai Patel as PW – 3 at Exhibit – 14 and through him they have proved the PM Note at Exhibit – 15, which supports the say of the prosecution *in toto*. The said witness has deposed that the injuries sustained by the deceased could be possible by the infliction of blows by 'muddamal' article no. 6. The said witness has further deposed that the injuries sustained by the deceased were anti-mortem and that the same were sufficient to cause the death of the deceased.

11.0 So far as the aspect of delay is concerned, it is a matter of record that the death has taken place during night hours. From the depositions of PW – 1 & PW - 2, it is clearly established that since the house of the deceased was situated in a remote area, the other members of the family of the deceased could not ask for any help and, therefore, they waited till the morning. In the morning, PW – 1 along with the Sarpanch of the Village, went to the Police Station and

registered the complaint in question. In the complaint filed by PW – 1 at Exhibit – 12, necessary averments with respect to the cause of delay in filing the complaint has also been narrated. Looking to the facts and circumstances of the case, we are of the opinion that the complaint at Exhibit – 12 was filed at the earliest point of time and, therefore, the contention raised by the appellant as regards delay deserves to be rejected.

12.0 From the oral as well as documentary evidence on record and, more particularly, the evidence of PW – 3, we are of the view that the link of injuries is proved beyond doubt. Even before the Court below, the appellant has not disputed the death as a “homicidal death”. Thus, we have no hesitation in holding that the death in question was a “homicidal death”.

13.0 Considering the facts and circumstances of the case and the oral as well as documentary evidence on record, we are of the opinion that the Court below was completely justified in convicting the appellant for the offence in question. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below and, hence, find no reasons to interfere in this Appeal.

14.0 In the result, the Appeal is dismissed. The impugned judgment and order dated 12th August, 1998 passed by the learned Addl. Sessions Judge, Camp at Vyara in Sessions Case No.49 of 1997 is confirmed.

[R. P. Dholakia, J.] [K. S. Jhaveri, J.]

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